

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Triangle Communications Systems, Inc.'s ) WC Docket No. 09-197  
Petitions for Agreement in Redefining the )  
Service Areas of Rural Telephone Companies )  
In Montana )

**Comments of the  
Montana Telecommunications Association**

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The Montana Telecommunications Association (MTA) represents rural and non-rural, shareholder-owned commercial, and member-owned cooperative telecommunications service providers serving ninety percent of the fixed wireline telecommunications service consumers in Montana.

MTA was a party to the Montana Public Service Commission (MTPSC) proceedings in which Triangle Communications System (TCS) petitioned the MTPSC for designation as a competitive eligible telecommunications carrier (CETC) in redefined portions of the study areas of Triangle Telephone Cooperative Association, Inc. (TTC) and Central Montana Communications, Inc. (CMC).<sup>1</sup> MTA, 3 Rivers Communications, and Montana's Consumer Counsel (MCC) separately opposed TCS' petition for designation as an ETC. The MTPSC granted TCS' application in May, 2007.<sup>2</sup> MTA and MCC separately filed Motions for Reconsideration. In July, 2007, the MTPSC denied the Motions, thereby granting TCS' application for designation as an ETC and its petition for redefinition of the TTC and CMC study areas.<sup>3</sup>

TCS subsequently filed in August, 2007, a petition<sup>4</sup> with the Federal Communications Commission (Commission) for agreement to redefine the study areas of TTC and CMC, as it is required by law to seek agreement from both the MTPSC and the Commission for study area redefinition.<sup>5</sup> The Commission released a Public Notice on August 29, 2007, seeking comments on TCS' petition for redefinition.<sup>6</sup> MTA filed comments on September 28, 2007, and Reply

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<sup>1</sup> *In the Matter of the Application of Triangle Communications System, Inc., Application for Designation as an Eligible Telecommunications Carrier*, Docket No. D2004.1.6.

<sup>2</sup> *In the Matter of the Application of Triangle Communications System, Inc., Application for Designation as an Eligible Telecommunications Carrier*, Docket No. D2004.1.6. Final Order No. 6723a (May 8, 2007).

<sup>3</sup> *In the Matter of the Application of Triangle Communications System, Inc., Application for Designation as an Eligible Telecommunications Carrier*, Docket No. D2004.1.6, Final Order on Reconsideration, Order No. 6723b (July 26, 2007).

<sup>4</sup> *Triangle Communications System, Inc., Petition for FCC Agreement to Redefine the Study Areas of Two Rural Telephone Companies in Montana*, CC Docket No. 96-45 (Filed, August 16, 2007).

<sup>5</sup> 47 U.S.C. §214(e)(5).

<sup>6</sup> *Comment Sought on a Petition by Triangle Communication System, Inc. to Redefine the Service Areas of Certain Rural Incumbent Local Exchange Carriers in Montana*, CC Docket No. 96-45, Public Notice, DA 07-3791 (Rel. Aug. 29, 2007).

Comments on October 15, 2007, expressing a number of concerns that it believed warranted the Commission's attention.<sup>7</sup>

The Commission subsequently released on November 26, 2007, a Public Notice announcing the initiation of a proceeding to consider TCS' petition for study area redefinition and inviting comments from interested parties.<sup>8</sup> MTA filed comments on December 26, 2007, in response to the November Public Notice.<sup>9</sup> In the conclusion to its December, 2007, Comments, MTA referred to a then-recent statement of the Federal-State Joint Board on Universal Service that "it is no longer in the public interest to use federal universal service support to subsidize competition and build duplicate networks in high cost areas."<sup>10</sup> MTA's comments further questioned

...whether it is appropriate for the redefinition of study areas to be granted to a subsidiary of the company whose study area is proposed to be redefined...whether it is appropriate for redefinition of a study area to be granted if the petitioning carrier could potentially serve the ILEC's entire study area with alternative licenses or technologies that are nonetheless demonstrably viable in the marketplace...[and whether] disaggregation may mitigate other concerns related to redefinition of a study area.<sup>11</sup>

Many of the same questions and concerns—and more—that MTA raised in 2007 remain as relevant today as they were then.

MTA discusses such questions in the following Comments.

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<sup>7</sup> *Triangle Communications System, Inc., Petition for FCC Agreement to Redefine the Study Areas of Two Rural Telephone Companies in Montana*, CC Docket No. 96-45, Comments of the Montana Telecommunications Association (September 28, 2007). ECFS Confirmation No. 2007928481427. Reply Comments of the Montana Telecommunications Association (October 15, 2007). ECFS Confirmation No. 20071015957194.

<sup>8</sup> *Initiation of a Proceeding to Consider a Petition to Redefine Certain Rural Telephone Company Service Areas in the State of Montana*, CC Docket No. 96-45, DA 07-4719 (Rel. November 26, 2007).

<sup>9</sup> *Initiation of a Proceeding to Consider a Petition to Redefine Certain Rural Telephone Company Service Areas in the State of Montana*, CC Docket No. 96-45, DA 07-4719 (Rel. November 26, 2007). Comments of the Montana Telecommunications Association (December 26, 2007). ECFS Confirmation No. 20071226950638.

<sup>10</sup> *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-37, CC Docket No. 96-45, Recommended Decision (Rel. November 20, 2007).

<sup>11</sup> MTA Comments. *Op cit.* pp. 9-10.

### Should the Commission Consider the Parent-Subsidiary Relationship between TCS, CMC and TTC?

TCS is a wireless subsidiary of TTC, its parent company. CMC is a wireline subsidiary of parent company, TTC. While the interrelationship between TCS, CMC and TTC was raised before the MTPSC by MTA and the Consumer Counsel in 2007, the issue has not, to MTA's knowledge, been fully considered by the Commission. In short, the Commission has yet to determine whether a parent company's subsidiary petitioning to redefine the parent's own service area in behalf of its subsidiary meets an appropriate standard of scrutiny regarding prudent use of limited universal service resources.

The MTPSC Final Order notes that "neither the law nor the rules carve out and preclude circumstances involving affiliates of ILECs."<sup>12</sup> True. However, the MTPSC did not explore *redefinition* in the context of the subsidiary relationship. The Commission may wish to explore parent-subsidiary relationships in the context of redefinition petitions.

### Are the Proposed Redefined Service Areas Underserved?

The MTPSC Final Order states that "TCS estimated, based on landline serving locations, to already serve 88.7% of the subscribers in the redefined service area."<sup>13</sup> MTA is not aware if TCS, covering *in 2007* nearly 90 of the serving locations in its proposed redefined service areas, has expanded (or reduced) coverage in the ensuing years since the MTPSC considered TCS' ETC application.

Additionally, Sagebrush Cellular, a CETC subsidiary of Nemont Telephone Cooperative, indicates on its coverage map<sup>14</sup> that it has analog towers in the towns of Whitewater, Harlem, Chester, Hays and Malta; and it has digital towers

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<sup>12</sup> MTPSC Final Order. *Op cit.* p.32.

<sup>13</sup> *Id.* p. 37.

<sup>14</sup> See <http://www.sagebrushcell.com/Coverage.php>. The coverage map carries a copyright mark dated 2004. It is uncertain whether the coverage map therefore is "stale," or that coverage has been extended further in the seven years since posting the map on line.

in Harlem, Malta and Chinook. These towns comprise all but two of the towns that TCS proposes to serve as redefined service areas.

While nothing in the law prohibits designation of multiple ETCs serving in the same study or service area, there is nothing *requiring* designation of multiple ETCs in the same rural service areas. MTA questions whether designation of an additional ETC in areas already served by at least one ETC, with the support of vital—yet limited—universal service resources, constitutes good public policy or sound fiscal management of limited universal service resources.

### Would Designation of Additional CETCs Threaten High Cost Support for Rural ETCs?

Prudent stewardship of limited universal service resources is critical in today's reform environment where the Commission is considering proposals to reform universal service and intercarrier compensation<sup>15</sup> within a limited budget.<sup>16</sup> In this environment, some parties have urged the Commission both to adopt an "industry consensus framework"<sup>17</sup> proposed by a coalition of price cap carriers and associations representing rural local exchange carriers (RLECs), and to include additional support for wireless CETCs.<sup>18</sup> To the extent that designation of additional CETCs would increase demand on High Cost Fund support for RLECs in excess of the \$300 million reserve for the proposed Mobility Fund, such designation would disturb the carefully crafted balance of benefits

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<sup>15</sup> See for example, *Further Inquiry into Certain Issues in the Universal Service-Inter-carrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, DA 11-1348 (Rel. August 3, 2011). "Further Inquiry."

<sup>16</sup> MTA believes that the widely-held "determination" that the Universal Service Fund cannot expand significantly beyond today's funding levels is not based on analysis and in fact invites a host of future negative consequences. The Fund faces a variety of pressures which render an arbitrary funding limit problematic, given skyrocketing (uncapped) Low Income support, growing (indexed for inflation) Schools & Libraries support, proposed expansion of the Rural Health Care Program and increased demands placed on the High Cost Program.

<sup>17</sup> As discussed in the Further Inquiry, the industry framework comprises the "ABC Plan" and the "RLEC Plan" as outlined in a joint letter to FCC Chairman Genachowski and Commissioners Copps, McDowell, and Clyburn filed on July 29, 2011 by USTelecom, AT&T, CenturyLink, FairPoint, Frontier, Verizon, Windstream, NTCA, OPASTCO, and WTA.

<sup>18</sup> See for example, *Further Inquiry, Reply Comments in Response to August 23, 2011 Further Inquiry into Certain Issues in the Universal Service-Inter-carrier Compensation Transformation Proceeding*, Montana Independent Telecommunications System, LLC (MITS) (September 6, 2011). TTC is a client/member of MITS.

and compromises contained in the industry framework and thus would threaten critical universal service support for future RLEC operating and capital investment in rural telecommunications infrastructure.<sup>19</sup>

### Does TCS' Redefinition Petition Exceed the Scope of the MTPSC Orders?

TCS seeks service area redefinition of individual wire centers within TTC's and CMC's study areas. TCS states that "[a]s a result of this redefinition, each wire center that TCS serves in its entirety is a separate service area" of TTC or CMC.<sup>20</sup> MTA does not find any evidence in the MTPSC Final Order or the MTPSC Order on Reconsideration to indicate that the MTPSC considered or approved redefinition of each wire within the study areas of TTC or CMC as separate, stand-alone service areas. Rather, the "PSC approve[d]...TCS's proposal to redefine the study areas of each of TTCA and CMC."<sup>21</sup> That is, at least as MTA interprets the Orders, the MTPSC approved redefinition of the parent company study areas, not individual exchanges. The MTPSC, moreover, found a "community of interest that overlaps portions of the two ILEC's [sic] study areas."<sup>22</sup> Finding a community of interest among proposed service areas further would indicate, in MTA's opinion, that the MTPSC approved study area redefinition, and not separate exchange-by-exchange redefinition.

Additionally, it is MTA's understanding that separate exchange-by-exchange area redefinition warrants a disaggregation proceeding and determination. TCS did not request, nor did the MTPSC consider

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<sup>19</sup> NTCA has "observed that there is no clear evidence yet to indicate that [an annual funding target of \$300 million for mobility objectives, as contained in the industry framework] would be insufficient after identical support and duplicative support were eliminated to support wireless in rural areas where no other wireless services would be available." Ex Parte Notice, WC Docket Nos. 10-90, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, DA 11-1348 (filed by Michael Romano, Senior Vice President, NTCA, September 12, 2011).

<sup>20</sup> *Petition for FCC Agreement to Redefine the Study Area of a Rural Telephone Company in Montana – Triangle Communication System, Inc.* [sic], WC Docket No. 09-197 (submitted August 4, 2011), "TTC Petition," p. 4; and *Petition for FCC Agreement to Redefine the Study Area of a Rural Telephone Company in Montana – Central Montana Communications, Inc.*, WC Docket No. 09-197 (submitted August 4, 2011), "CMC Petition," p. 4.

<sup>21</sup> Final Order, p. 34, 35.

<sup>22</sup> *Id.* p. 34.

disaggregation. Disaggregation is considered a significant factor in determining whether CETC status should be granted particularly on a sub-study area level. For example, the Commission has found “that rural telephone companies now have the option of disaggregating and targeting high-cost support below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service.”<sup>23</sup>

In short, does TCS’ petition for separate exchange-by-exchange service area redefinition: 1) exceed the scope of MTPSC Order; and 2) require a separate redefinition and disaggregation proceeding and determination?

TCS’ petition states that “TCS is committed to serve the areas within those incumbent LECs’ exchanges that are presently unserved by a wireless carrier and that are best suited for creating a contiguous wireless service area within which TCS can expand its wireless footprint in compliance with the 98% geographic coverage standard.”<sup>24</sup> If the exchange areas TCS proposes to serve are contiguous, as implied, why does TCS seek each exchange be considered a separate service area? Does treating each exchange as a separate service area change the amount of universal service support TCS would receive?

#### What are the Effects of TCS’ New Petition for Tribal Exemption Support under the 2008 CETC Cap Order?

In its refiled (August 4, 2011) petition for redefinition of the CMC study area, TCS seeks approval for uncapped support under an exemption provision contained in the CETC Cap Order of 2008.<sup>25</sup> The CETC cap, as well as the Tribal exemption contained therein, was established after the MTPSC granted

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<sup>23</sup> See *ETC Report and Order*, 20 FCC Rcd at 6393-94.

<sup>24</sup> TTC Petition, p. 8; CMC Petition, p. 9. MTA notes, *supra*, that TCS’ assertion that it is committed to serve areas that are presently unserved by a wireless carrier appears to be contradicted at least as far as Sagebrush Cellular’s coverage map depicts.

<sup>25</sup> *In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service, Alltel Communications, Inc., et al. Petitions for Designation as Eligible Telecommunications Carriers, RCC Minnesota, Inc. an RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-122 (Rel. May 1, 2008). “CETC Cap Order.”

TCS' application for designation as a CETC in redefined service areas of TTC and CMC and after TCS applied for Commission approval of its redefinition petition. Does TCS seek a new remedy which was neither applied for nor considered by the MTPSC? Does this subsequent event (the CETC cap and the Tribal exemption) require fresh review by the MTPSC and/or separate review by the Commission?

What additional (uncapped) support does TCS anticipate if the Commission were to grant its redefinition petition? Does the uncapped Tribal support reduce the total statewide CETC capped support amount, or is the uncapped support "below the line," effectively reducing other High Cost support?

The 2008 CETC Cap Order states, "Because many tribal lands have low penetration rates for basic telephone service, we do not believe that competitive ETCs are merely providing complementary services in most tribal lands as they do generally."<sup>26</sup> TCS states that redefinition and CETC designation would allow TCS to "deploy advanced wireless services and bring basic universal service to unserved areas of the reservation in furtherance of the FCC's objective of bringing broadband as well as basic telephone service to Tribal lands."<sup>27</sup> Is this true in the Covered Locations for which TCS seeks redefinition? Is the Reservation currently unserved with either wireless or "basic universal service?"<sup>28</sup> What is the current availability of broadband and basic service—in terms of access to universal service, as opposed to actual subscribership or adoption of service—provided by CMC or TCS in the Covered Locations proposed for redefinition?

In footnote 43 of the TCS-CMC redefinition petition, TCS states that "[m]any potential TCS subscribers live on the Fort Belknap Reservation but have mailing addresses that are located off-reservation." How does TCS propose to verify eligibility under the Tribal exemption for subscribers whose residency/eligibility cannot be established by location?

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<sup>26</sup> *Id.* ¶32.

<sup>27</sup> *Op cit.* pp. 6-7.

<sup>28</sup> *Id.* p. 11.



The CETC Cap Order states that a CETC seeking support under the Tribal exemption “must certify the number of lines that meet the limited exception requirements. The [CETC] also must provide a specific description of how it confirmed that it had met the certification threshold.”<sup>29</sup> How will eligible lines be counted and verified?

Should the Commission Consider Whether TCS can Provide Service to More Consumers Using Alternative Technologies?

As MTA mentioned in its December 26, 2007 comments, TCS proposes to serve, if granted redefinition, only areas where its 800 MHz spectrum license provides coverage. Is it appropriate to redefine service areas to accommodate only one spectrum (800 MHz), when TCS serves nearly all of TTC and CMC study areas with a combination of 800 MHz and other licenses (e.g., 700 MHz and 1900 MHz)?

The Commission Should Consider Independently of the MTPSC the Issues Raised by TCS’ Petitions

The Commission has the responsibility separately to review the merits of a redefinition petition, notwithstanding findings by the MTPSC or any other state commission.<sup>30</sup> The Commission has never unilaterally redefined the study area of a rural carrier in order to award it status as a competitive ETC. In its recent *Standing Rock* decision, the Commission specifically concluded that the “plain language of section 214(e)(5) dictates that neither the Commission nor the states may act alone to alter the definition of service areas served by rural carriers.”<sup>31</sup>

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<sup>29</sup> Op cit. ¶34 (footnotes omitted).

<sup>30</sup> See further discussion in MTA comments, 9/28/07. *Op cit.*

<sup>31</sup> See, *Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier*, WC Docket 09-197, FCC 11-102, ¶23, (Rel. June 22, 2011).

## Conclusion

The TCS Petitions for redefinition of TTC and CMC study areas raise a number of questions which warrant thorough analysis by the Commission.

Respectfully submitted,

/s/

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